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			EXAMINER TRAN LIEN, THUY	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/774,692
Filing Date: February 10, 2004
Appellant(s): HOWARD ET AL.

SEP 20 2006

GROUP 1700

Ramon R. Hoch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/5/06 appealing from the Office action mailed 2/14/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,846,585

OHMURA et al

12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11-20, 22-29, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmura et al.

Ohmura et al disclose a process of decreasing the bulk of food product. The process comprises the step of subjecting the food product which has been heat treated to a treatment for decreasing its bulk. The food product after treatment for decreasing the bulk is .01-.9 time as large as the bulk before the treatment. The food product includes bread slices. The heat treatment includes roasting, baking, frying, etc... The food product is characterized in that its bulk is restored after compression. The treatment of decreasing the bulk includes pressure compression with the use of a press. The food product after compressing is subjected to freezing, packaging and sealing. The food product can contain filling materials. The edible filling material may be introduced into the food having a decreased bulk after the compression. (

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see col. 4 lines 8-31, 55-60, col. 6 lines 27-30, 45-50, col. 8 lines 6-16, 29-34, col. 9 lines 30-37, col. 19 lines 50-54)

Ohmura et al do not disclose toasting, cracking the crust portion, the means of compressing as claimed, grilling at the temperature and time claimed, the reduced thickness as claimed, applying edible oil and toasting using an impingement oven.

Ohmura et al teach heat-treating the bread. Thus, it would have been obvious to one skilled in the art to toast the bread because it is a well-known technique for heating bread. Ohmura et al also teach baking which will cause toasting when the bread is brown because toasting involves heating till the bread is brown, hot and crispy. It would have been obvious to bake to toasting when one wants brown and crispy bread. It would have been obvious to use any known equipment for baking and impingement oven is well known in the art. Ohmura et al disclose heating also includes roasting which would include grilling because roasting is commonly done by grilling. It would have been obvious to one skilled in the art to use any known device to do the compressing; the devices claimed are well known. It would have been obvious to have varying degree of compression to obtain varying degree of reduced thickness depending on the decrease in bulk wanted; this can readily be determined by one skilled in the art. It would also have been obvious to apply an oil to the surface of the bread to enhance the taste of the product because fat serves to improve the texture and fat is also known to serve as moisture barrier which improves the storage stability.

(10) Response to Argument

On pages 12-13 of the appeal brief, appellant argues Ohmura et al nowhere teach or suggest toasting individual slices of the baked loaves followed by a slice toast compression

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treatment that induces crust cracking in a controlled amount to reduce toast thickness. This argument is not persuasive. Compression treatment of individual slices is fully suggested in Ohmura et al. Ohmura et al teach the porous food having been treated by heating is subjected to the treatment for decreasing its bulk after division such as slicing (see col. 6 lines 44-50). This disclosure explicitly teaches that the entire loaf can be compressed or individual slice can be compressed. In the same column, Ohmura et al also teach “ when the porous food having been treated by heating is a semi-baked bread, heat treatment such as baking may be effected in the subsequent step” (see lines 37-40). This indicates that an already baked bread can be subjected to baking before compression; the claims do not recite any degree of baking for the bread.

Baking is heating the bread which will cause toasting depending on the degree of brownness and crispiness; it would have been obvious to one skilled in the art to bake to toasting when desiring a brown and crispy product. Furthermore, claim 15 recites toasting is done at a temperature of at least about 475 degree C and claim 16 recites the time is less than 60 seconds. Ohmura et al disclose on column 6 lines 39-42, “ the baking or semi-baking of the bread is performed by heating in an oven at temperature of about 150-250 degree C for 5-30 minutes. The temperature and time period disclosed are well capable of causing toasting of the bread. Ohmura et al also disclose on column 4 lines 13-14, “ the treated food is from .01-.9 time as large as the bulk of the food before treatment”; thus, the degree of reduction can fall within the range claimed.

Appellant further argues Ohmura et al desire to restore bulk in the compressed and frozen food product back to the original size after baking; thus, it is imperative to retain sufficient moisture and protein and these characteristics are inconsistent with a toasted individual slice of bread.

This argument is not based on any disclosure in the Ohmura et al reference or any factual

evidence. The slicing of bread into slice and baking to toasting of the slice does not cause reduction of the protein content. As to the moisture content, Ohmura et al disclose the bread can be semi-baked and then baked; this product is then subjected to compression and such product is capable of restoring. Thus, there is no evidence to conclude that a toasted bread slice is not capable of performing in the Ohmura et al process.

On page 14, appellant argues Ohmura et al bake the bread once whereas in the present invention, the bread is toasted after baking. As pointed out above, Ohmura et al also disclose semi-baking and then baking. Appellant states Ohmura et al prefer very moist bread. Ohmura et al do not disclose any requirement on the moisture content of the treated food. On page 15 of the appeal brief, appellant states Ohmura et al only describe and exemplify compression conducted on the whole loaves of bread; there is not enabling disclosure on compression of single slices of bread. What does appellant mean by non-enabling disclosure on compression of single slice? Ohmura et al disclose the compressing treatment can be after division, for example slicing or plucking off; thus, there is no evidence of non-enabling. Whether it is a whole loaf or single slice, the compression will be the same; if a whole loaf can be compressed, then it is obvious a single slice can be compressed. Appellant further argues Ohmura et al state that is preferable that the crust portion is at least 70% of the total surface area while the slice in the present invention typically represents about 15% of the total surface. As pointed out by appellant, the crust portion constituting at least 70% of the total surface area is a preferred embodiment; it is not the only embodiment as Ohmura et al teach the compression can be carried out on bread after slicing.

On page 16 of the appeal brief, appellant argues the compression treatments in Ohmura et al occurring before freezing without relieving the pressure or alternatively simultaneously with or after freezing. This argument is not persuasive. Ohmura et al teach compressing the bread roll between compression plates and rapidly cooling to -30°C ; the roll is then relieved from the press plates and introduced into a packaging film. The compression is done till the product is cooled to -30°C but the pressure is then relieved. The claims do not have any limitation on the time of the compression; thus, how long the bread is held in compression is not an issue with respect to the claims. Appellant states that cracking does take place in the Ohmura et al process. Since Ohmura et al teach compressing the bread and the bread can be sliced, it is obvious cracking takes place because the product that is being compressed is a baked product including a twice-baked product that is in the same form as claimed. Appellant states the compression of the toasted bread slices in the present application is relatively rapid. The claims do not recite the time of compression; furthermore, the compression in Ohmura et al is on the order of seconds which are considered rapid. Appellant states treatment of an individual toasted slice of bread is nowhere to be found within the four corners of Ohmura et al. As discussed above, Ohmura et al do disclose and would have suggested to one skilled in the art treatment of individual slices.

On page 17 of the appeal brief, appellant makes the same argument about treatment of individual slices; the argument is not persuasive for reason set forth above. With respect to the application of oil, appellant does not argue that applying oil to enhance texture, flavor and storage stability would not have been obvious.

On page 18, appellant argues Ohmura et al are freezing a different product from that of the present claims on appeal. Claim 18 requires freezing the toasted bread slice. Ohmura et al teach freezing after the food product is heat-treated and compressed (see example 1). It is not seen how this is different from the limitation in claim 18. The claims do not exclude the other processing of Ohmura et al. With respect to claim 19, appellant makes the same argument with respect to the issue of compressing a loaf of bread and maintaining compressing during freezing. This argument is not persuasive for reason set forth above. Appellant further argues Ohmura et al prescribe a high moisture bread environment and say one cannot be successful with relatively low moisture. While Ohmura et al disclose food having relatively low moisture content can hardly be restored, there is no specific disclosure of what this moisture content is. The claims do not recite the moisture content of the toasted bread and Ohmura et al do teach compressing bread product that is semi-baked and then baked before the compression. Thus, Ohmura et al do teach compressing a twice-heated bread product.

On page 19 of the appeal brief, appellant makes the same argument about compressing the whole loaf with respect to claim 22; the argument is not persuasive for reason set forth above.

With respect to claims 23,24,29,32,33, 25-27, 29 and 31, appellant makes the same argument about the lack of teaching of compressing individual slice of toast bread and the lack of teaching on toasting. This argument is not persuasive as set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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